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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.								
10/789,943	02/27/2004	Andreas Reinmann	34083/US	5798								
<div>7590 09/06/2007 David E. Bruhn DORSEY &amp; WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498</div>			<div>EXAMINER DESANTO, MATTHEW F</div> <table border="1"><thead><tr><th>ART UNIT</th><th>PAPER NUMBER</th></tr></thead><tbody><tr><td>3763</td><td></td></tr></tbody></table> <table border="1"><thead><tr><th>MAIL DATE</th><th>DELIVERY MODE</th></tr></thead><tbody><tr><td>09/06/2007</td><td>PAPER</td></tr></tbody></table>		ART UNIT	PAPER NUMBER	3763		MAIL DATE	DELIVERY MODE	09/06/2007	PAPER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/789,943	Applicant(s) REINMANN ET AL.	
	Examiner Matthew F. DeSanto	Art Unit 3763	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behnke et al. (USPN 5,520,641) in view of Paul, JR. (US Pub 20010041872).

Behnke discloses a membrane-cannula combination for biological applications, said combination comprising a cannula (C) for conveying a fluid, a casing (20, 24, 30), and a membrane (126) accommodated by said casing and comprising an elastic membrane material through which a passage is formed, into which said cannula can be inserted, wherein said passage is expanded by inserting the cannula and said membrane material presses against the casing, generally perpendicularly relative to the passage, and elastically presses against the inserted cannula such that the membrane material surrounds the cannula in a seal; wherein e) the passage and the cannula exhibit different cross-sectional shapes relative to each other before the cannula is inserted and one of the passage or the cannula has an elongated cross-sectional area (see figures 1, 2, 4, 6-9, and entire reference), but fails to disclose the specific shape of the openings in the membrane.

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Paul, Jr discloses a medical fluid flow control membrane that has at least one perforation that can have a circle or oval shape (para [0052]). When the seal perforation is oval, the membrane will have "an increasing cross section from the first seal face to the second seal face" (paragraph [0052]).

Therefore at the time of the invention it would have been obvious for one of ordinary skill in the art to combine the device of Behnke with the teachings of Paul, Jr. because Paul, Jr. teaches the added benefit of modifying the shape of the perforation in the medical device membrane, so that the perforation in the membrane will have an increased cross section as well as other added benefits that were taught by Paul, Jr. (Paul Jr. para [0052]).

The examiner would also like to note that there is case law that further supports this rejection based on the obviousness of modifying a device in view of a shape.

3. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (USPN 6,210,377), and further in view of Paul, JR. (US Pub 20010041872).

Ouchi discloses a membrane-cannula combination for biological applications, said combination comprising a cannula for conveying a fluid, a casing (2600); c) and a membrane (2721P, figure 86) accommodated by said casing and comprising an elastic membrane material through which a passage is formed, into which said cannula can be inserted, wherein said passage is expanded by inserting the cannula and said membrane material presses against the casing, generally perpendicularly relative to the passage, and elastically presses against the inserted cannula such that the membrane

material surrounds the cannula in a seal; wherein the passage and the cannula exhibit different cross-sectional shapes relative to each other before the cannula is inserted and one of the passage or the cannula has an elongated cross-sectional area (see figures 22, 27, 78-88, and Columns 15, 16, & 27-29), but fails to disclose the specific shape of the openings in the membrane.

Paul, Jr discloses a medical fluid flow control membrane that has at least one perforation that can have a circle or oval shape (para [0052]). When the seal perforation is oval, the membrane will have "an increasing cross section from the first seal face to the second seal face" (paragraph [0052]).

Therefore at the time of the invention it would have been obvious for one of ordinary skill in the art to combine the device of Ouchi with the teachings of Paul, Jr. because Paul, Jr. teaches the added benefit of modifying the shape of the perforation in the medical device membrane, so that the perforation will have an increased cross section as well as other added benefits (Paul Jr. para [0052]).

The examiner would also like to note that there is case law that further supports this rejection based on the obviousness of modifying a device in view of a shape.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.
5. The previous 102 Rejections have been withdrawn based on the amendments to the claims.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Matthew DeSanto', with a stylized, flowing script.

Matthew DeSanto  
Art Unit 3763  
September 4, 2007